

SHB 2027 - S COMM AMD

By Committee on Technology & Communications

ADOPTED 04/10/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.155.010 and 1993 c 507 s 2 are each amended to
4 read as follows:

5 The definitions set forth in RCW 82.24.010 shall apply to RCW
6 70.155.020 through 70.155.130. In addition, for the purposes of this
7 chapter, unless otherwise required by the context:

8 (1) "Board" means the Washington state liquor control board.

9 (2) "Delivery sale" means any sale of cigarettes to a consumer in
10 the state where either: (a) The purchaser submits an order for a sale
11 by means of a telephonic or other method of voice transmission, mail
12 delivery, any other delivery service, or the internet or other online
13 service; or (b) the cigarettes are delivered by use of mail delivery or
14 any other delivery service. A sale of cigarettes shall be a delivery
15 sale regardless of whether the seller is located within or without the
16 state. A sale of cigarettes not for personal consumption to a person
17 who is a wholesaler licensed pursuant to chapter 82.24 RCW or a
18 retailer pursuant to chapter 82.24 RCW is not a delivery sale.

19 (3) "Delivery service" means any private carrier engaged in the
20 commercial delivery of letters, packages, or other containers that
21 requires the recipient of that letter, package, or container to sign to
22 accept delivery.

23 (4) "Minor" refers to an individual who is less than eighteen years
24 old.

25 ~~((+3))~~ (5) "Public place" means a public street, sidewalk, or
26 park, or any area open to the public in a publicly owned and operated
27 building.

28 ~~((+4))~~ (6) "Sample" means a tobacco product distributed to members
29 of the general public at no cost or at nominal cost for product
30 promotion purposes.

1 ~~((5))~~ (7) "Sampler" means a person engaged in the business of
2 sampling other than a retailer.

3 ~~((6))~~ (8) "Sampling" means the distribution of samples to members
4 of the general public in a public place.

5 ~~((7))~~ (9) "Shipping container" means a container in which
6 cigarettes are shipped in connection with a delivery sale.

7 (10) "Shipping documents" means bills of lading, airbills, or any
8 other documents used to evidence the undertaking by a delivery service
9 to deliver letters, packages, or other containers.

10 (11) "Tobacco product" means a product that contains tobacco and is
11 intended for human consumption.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.155 RCW
13 to read as follows:

14 (1) It is unlawful for a person who mails, ships, or otherwise
15 delivers cigarettes to fail to:

16 (a) Verify the age of the receiver of the cigarettes upon delivery;
17 and

18 (b) Obtain in writing, before the first delivery sale of
19 cigarettes, verification of the receiver's address and that the
20 receiver of the cigarettes is not a minor. The statement must also
21 confirm that the purchaser understands: (i) That signing another
22 person's name to the certification is a violation of RCW
23 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a
24 violation of RCW 26.28.080; (iii) that the purchase of cigarettes by
25 minors is a violation of RCW 70.155.080; and (iv) that he or she has
26 the option to receive mailings from a tobacco company about tobacco
27 products.

28 (2) It is unlawful for a person to mail, ship, or otherwise deliver
29 cigarettes in connection with a delivery sale unless before the first
30 delivery sale to the consumer that person:

31 (a) Either verifies the information contained in the certification
32 provided by the prospective consumer in subsection (1) of this section
33 against a commercially available data base, or obtains a photocopy of
34 an officially issued identification containing the bearer's age,
35 signature, and photograph. The only forms of identification that are
36 acceptable as proof of age for the purchase for tobacco products are:

1 (i) A liquor control authority card of identification issued by a state
2 of the United States or a province of Canada, (ii) a driver's license,
3 instruction permit, or identification card issued by a state of the
4 United States or a province of Canada, (iii) a United States military
5 identification card, (iv) a passport, or (v) a merchant marine
6 identification card issued by the United States coast guard;

7 (b) Provides to the prospective consumer through electronic mail or
8 other means a notice that meets the requirements of subsection (3) of
9 this section; and

10 (c) In the case of an order for cigarettes pursuant to an
11 advertisement on the internet, receives payment for the delivery sale
12 from the prospective consumer by a credit card or debit card, or by
13 check that has been issued in the prospective consumer's name.

14 (3) The notice required under subsection (2)(b) of this section
15 must include:

16 (a) A prominent and clearly legible statement that cigarette sales
17 to minors are illegal;

18 (b) A prominent and clearly legible statement that consists of one
19 of the warnings set forth in section 4(a)(1) of the federal cigarette
20 labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a
21 quarterly basis;

22 (c) A prominent and clearly legible statement that sales of
23 cigarettes are restricted to those consumers who provide verifiable
24 proof of age in accordance with subsection (1) of this section; and

25 (d) A prominent and clearly legible statement that cigarette sales
26 are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an
27 explanation of how the tax has been or is to be paid with respect to a
28 delivery sale.

29 (4) It is unlawful for a person who mails, ships, or otherwise
30 delivers cigarettes in connection with a delivery sale to fail to:

31 (a) Include as part of the bill of lading, or other shipping
32 documents, a clear and conspicuous statement that states: "Cigarettes:
33 Washington Law Prohibits Shipping to Individuals Under 18, and Requires
34 the Payment of all Applicable Taxes";

35 (b) Contract only with private carriers who employ delivery agents
36 who will verify the receiver of the cigarettes is not a minor upon
37 delivery. The only forms of identification that are acceptable as

1 proof of age for the purchase for tobacco products are: (i) A liquor
2 control authority card of identification issued by a state of the
3 United States or a province of Canada, (ii) a driver's license,
4 instruction permit, or identification card issued by a state of the
5 United States or a province of Canada, (iii) a United States military
6 identification card, (iv) a passport, or (v) a merchant marine
7 identification card issued by the United States coast guard;

8 (c) Provide to the delivery service retained for the delivery sale
9 evidence of full compliance with this section.

10 (5)(a) Before making delivery sales or mailings, shipping, or
11 otherwise delivering cigarettes to a Washington address in connection
12 with any sales, any person who mails, ships, or otherwise delivers
13 cigarettes shall file with the board a statement setting forth the
14 person's name, trade name, and the address of the person's principal
15 place of business and any other place of business.

16 (b) Any person who mails, ships, or otherwise delivers cigarettes
17 in connection with a delivery sale shall within fifteen days after the
18 first of each month file with the board a report of all delivery sales
19 made by the person within this state for the preceding month. The
20 report shall show the name and address of the consumer to whom the
21 cigarettes were sold, the kind and quality, and the date of delivery
22 thereof.

23 (6)(a) Any person other than a delivery service who violates any of
24 the provisions of this section is guilty of a class C felony punishable
25 by up to five years in prison and a fine of ten thousand dollars, and
26 payment of the cost of investigation and prosecution, including
27 attorneys' fees.

28 (b) Any person other than a delivery service who commits a second
29 or subsequent violation of this section is a class B felony punishable
30 by up to ten years in prison and a fine of twenty thousand dollars, and
31 payment of the cost of investigation and prosecution, including
32 attorneys' fees.

33 (c) Any delivery service that violates any provision of this
34 section shall be guilty of a gross misdemeanor punishable by up to one
35 year in jail and a fine of five thousand dollars.

36 (7) Any person that fails to collect or remit to the department of

1 revenue any tax required under chapter 82.24 RCW in connection with a
2 delivery sale shall be assessed, in addition to any other penalty, a
3 penalty of five times the retail value of the cigarettes involved.

4 (8) For the purpose of obtaining information concerning any matter
5 relating to the administration or enforcement of this title, the board
6 or any of its agents may inspect the books, documents, and records of
7 any person who makes delivery sales or mailings, or ships or otherwise
8 delivers cigarettes or retains another person to make delivery sales or
9 mailings, or to ship or otherwise deliver cigarettes insofar as such
10 books, documents, and/or records pertain to the financial transaction
11 involved. If such a person neglects or refuses to produce and submit
12 for inspection any book, record, or document as required by this
13 section when requested to do so by the board or its agent, then the
14 board or the attorney general may seek an order in superior court
15 compelling such production of books, records, or documents.

16 **Sec. 3.** RCW 9A.82.010 and 2001 c 222 s 3 and 2001 c 217 s 11 are
17 each reenacted and amended to read as follows:

18 Unless the context requires the contrary, the definitions in this
19 section apply throughout this chapter.

20 (1)(a) "Beneficial interest" means:

21 (i) The interest of a person as a beneficiary under a trust
22 established under Title 11 RCW in which the trustee for the trust holds
23 legal or record title to real property;

24 (ii) The interest of a person as a beneficiary under any other
25 trust arrangement under which a trustee holds legal or record title to
26 real property for the benefit of the beneficiary; or

27 (iii) The interest of a person under any other form of express
28 fiduciary arrangement under which one person holds legal or record
29 title to real property for the benefit of the other person.

30 (b) "Beneficial interest" does not include the interest of a
31 stockholder in a corporation or the interest of a partner in a general
32 partnership or limited partnership.

33 (c) A beneficial interest is considered to be located where the
34 real property owned by the trustee is located.

35 (2) "Control" means the possession of a sufficient interest to
36 permit substantial direction over the affairs of an enterprise.

1 (3) "Creditor" means a person making an extension of credit or a
2 person claiming by, under, or through a person making an extension of
3 credit.

4 (4) "Criminal profiteering" means any act, including any
5 anticipatory or completed offense, committed for financial gain, that
6 is chargeable or indictable under the laws of the state in which the
7 act occurred and, if the act occurred in a state other than this state,
8 would be chargeable or indictable under the laws of this state had the
9 act occurred in this state and punishable as a felony and by
10 imprisonment for more than one year, regardless of whether the act is
11 charged or indicted, as any of the following:

12 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

13 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

14 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

15 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

16 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
17 9A.56.080;

18 (f) Unlawful sale of subscription television services, as defined
19 in RCW 9A.56.230;

20 (g) Theft of telecommunication services or unlawful manufacture of
21 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

22 (h) Child selling or child buying, as defined in RCW 9A.64.030;

23 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
24 9A.68.050;

25 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

26 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

27 (l) Extortionate extension of credit, as defined in RCW 9A.82.020;

28 (m) Advancing money for use in an extortionate extension of credit,
29 as defined in RCW 9A.82.030;

30 (n) Collection of an extortionate extension of credit, as defined
31 in RCW 9A.82.040;

32 (o) Collection of an unlawful debt, as defined in RCW 9A.82.045;

33 (p) Delivery or manufacture of controlled substances or possession
34 with intent to deliver or manufacture controlled substances under
35 chapter 69.50 RCW;

36 (q) Trafficking in stolen property, as defined in RCW 9A.82.050;

37 (r) Leading organized crime, as defined in RCW 9A.82.060;

- 1 (s) Money laundering, as defined in RCW 9A.83.020;
- 2 (t) Obstructing criminal investigations or prosecutions in
3 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
4 9A.76.070, or 9A.76.180;
- 5 (u) Fraud in the purchase or sale of securities, as defined in RCW
6 21.20.010;
- 7 (v) Promoting pornography, as defined in RCW 9.68.140;
- 8 (w) Sexual exploitation of children, as defined in RCW 9.68A.040,
9 9.68A.050, and 9.68A.060;
- 10 (x) Promoting prostitution, as defined in RCW 9A.88.070 and
11 9A.88.080;
- 12 (y) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- 13 (z) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- 14 (aa) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- 15 (bb) A pattern of equity skimming, as defined in RCW 61.34.020;
- 16 (cc) Commercial telephone solicitation in violation of RCW
17 19.158.040(1);
- 18 (dd) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- 19 (ee) Unlawful practice of law, as defined in RCW 2.48.180;
- 20 (ff) Commercial bribery, as defined in RCW 9A.68.060;
- 21 (gg) Health care false claims, as defined in RCW 48.80.030;
- 22 (hh) Unlicensed practice of a profession or business, as defined in
23 RCW 18.130.190(7);
- 24 (ii) Improperly obtaining financial information, as defined in RCW
25 9.35.010; (~~oe~~)
- 26 (jj) Identity theft, as defined in RCW 9.35.020;
- 27 (kk) Unlawful shipment of cigarettes in violation of section 2(6)
28 (a) or (b) of this act; or
29 (ll) Unlawful shipment of cigarettes in violation of RCW
30 82.24.110(2).

31 (5) "Dealer in property" means a person who buys and sells property
32 as a business.

33 (6) "Debtor" means a person to whom an extension of credit is made
34 or a person who guarantees the repayment of an extension of credit or
35 in any manner undertakes to indemnify the creditor against loss
36 resulting from the failure of a person to whom an extension is made to
37 repay the same.

1 (7) "Documentary material" means any book, paper, document,
2 writing, drawing, graph, chart, photograph, phonograph record, magnetic
3 tape, computer printout, other data compilation from which information
4 can be obtained or from which information can be translated into usable
5 form, or other tangible item.

6 (8) "Enterprise" includes any individual, sole proprietorship,
7 partnership, corporation, business trust, or other profit or nonprofit
8 legal entity, and includes any union, association, or group of
9 individuals associated in fact although not a legal entity, and both
10 illicit and licit enterprises and governmental and nongovernmental
11 entities.

12 (9) "Extortionate extension of credit" means an extension of credit
13 with respect to which it is the understanding of the creditor and the
14 debtor at the time the extension is made that delay in making repayment
15 or failure to make repayment could result in the use of violence or
16 other criminal means to cause harm to the person, reputation, or
17 property of any person.

18 (10) "Extortionate means" means the use, or an express or implicit
19 threat of use, of violence or other criminal means to cause harm to the
20 person, reputation, or property of any person.

21 (11) "Financial institution" means any bank, trust company, savings
22 and loan association, savings bank, mutual savings bank, credit union,
23 or loan company under the jurisdiction of the state or an agency of the
24 United States.

25 (12) "Pattern of criminal profiteering activity" means engaging in
26 at least three acts of criminal profiteering, one of which occurred
27 after July 1, 1985, and the last of which occurred within five years,
28 excluding any period of imprisonment, after the commission of the
29 earliest act of criminal profiteering. In order to constitute a
30 pattern, the three acts must have the same or similar intent, results,
31 accomplices, principals, victims, or methods of commission, or be
32 otherwise interrelated by distinguishing characteristics including a
33 nexus to the same enterprise, and must not be isolated events.
34 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
35 any person other than the attorney general or county prosecuting
36 attorney in which one or more acts of fraud in the purchase or sale of
37 securities are asserted as acts of criminal profiteering activity, it

1 is a condition to civil liability under RCW 9A.82.100 that the
2 defendant has been convicted in a criminal proceeding of fraud in the
3 purchase or sale of securities under RCW 21.20.400 or under the laws of
4 another state or of the United States requiring the same elements of
5 proof, but such conviction need not relate to any act or acts asserted
6 as acts of criminal profiteering activity in such civil action under
7 RCW 9A.82.100.

8 (13) "Real property" means any real property or interest in real
9 property, including but not limited to a land sale contract, lease, or
10 mortgage of real property.

11 (14) "Records" means any book, paper, writing, record, computer
12 program, or other material.

13 (15) "Repayment of an extension of credit" means the repayment,
14 satisfaction, or discharge in whole or in part of a debt or claim,
15 acknowledged or disputed, valid or invalid, resulting from or in
16 connection with that extension of credit.

17 (16) "Stolen property" means property that has been obtained by
18 theft, robbery, or extortion.

19 (17) "To collect an extension of credit" means to induce in any way
20 a person to make repayment thereof.

21 (18) "To extend credit" means to make or renew a loan or to enter
22 into an agreement, tacit or express, whereby the repayment or
23 satisfaction of a debt or claim, whether acknowledged or disputed,
24 valid or invalid, and however arising, may or shall be deferred.

25 (19) "Traffic" means to sell, transfer, distribute, dispense, or
26 otherwise dispose of stolen property to another person, or to buy,
27 receive, possess, or obtain control of stolen property, with intent to
28 sell, transfer, distribute, dispense, or otherwise dispose of the
29 property to another person.

30 (20)(a) "Trustee" means:

31 (i) A person acting as a trustee under a trust established under
32 Title 11 RCW in which the trustee holds legal or record title to real
33 property;

34 (ii) A person who holds legal or record title to real property in
35 which another person has a beneficial interest; or

36 (iii) A successor trustee to a person who is a trustee under (a)(i)
37 or (ii) of this subsection.

- 1 (b) "Trustee" does not mean a person appointed or acting as:
2 (i) A personal representative under Title 11 RCW;
3 (ii) A trustee of any testamentary trust;
4 (iii) A trustee of any indenture of trust under which a bond is
5 issued; or
6 (iv) A trustee under a deed of trust.

7 (21) "Unlawful debt" means any money or other thing of value
8 constituting principal or interest of a debt that is legally
9 unenforceable in the state in full or in part because the debt was
10 incurred or contracted:

- 11 (a) In violation of any one of the following:
12 (i) Chapter 67.16 RCW relating to horse racing;
13 (ii) Chapter 9.46 RCW relating to gambling;
14 (b) In a gambling activity in violation of federal law; or
15 (c) In connection with the business of lending money or a thing of
16 value at a rate that is at least twice the permitted rate under the
17 applicable state or federal law relating to usury.

18 **Sec. 4.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
19 as follows:

- 20 (1) The following are subject to seizure and forfeiture:
21 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
22 that are found at any point within this state, which articles are held,
23 owned, or possessed by any person, and that do not have the stamps
24 affixed to the packages or containers; and any container or package of
25 cigarettes possessed or held for sale that does not comply with this
26 chapter.
27 (b) All conveyances, including aircraft, vehicles, or vessels,
28 which are used, or intended for use, to transport, or in any manner to
29 facilitate the transportation, for the purpose of sale or receipt of
30 property described in (a) of this subsection, except:
31 (i) A conveyance used by any person as a common or contract carrier
32 having in actual possession invoices or delivery tickets showing the
33 true name and address of the consignor or seller, the true name of the
34 consignee or purchaser, and the quantity and brands of the cigarettes
35 transported, unless it appears that the owner or other person in charge

1 of the conveyance is a consenting party or privy to a violation of this
2 chapter;

3 (ii) A conveyance subject to forfeiture under this section by
4 reason of any act or omission of which the owner thereof establishes to
5 have been committed or omitted without his or her knowledge or consent;

6 (iii) A conveyance encumbered by a bona fide security interest if
7 the secured party neither had knowledge of nor consented to the act or
8 omission.

9 (c) Any vending machine used for the purpose of violating the
10 provisions of this chapter.

11 (d) All cigarettes sold, delivered, or attempted to be delivered in
12 violation of section 2 of this act.

13 (2) Property subject to forfeiture under this chapter may be seized
14 by any agent of the department authorized to collect taxes, any
15 enforcement officer of the board, or law enforcement officer of this
16 state upon process issued by any superior court or district court
17 having jurisdiction over the property. Seizure without process may be
18 made if:

19 (a) The seizure is incident to an arrest or a search under a search
20 warrant or an inspection under an administrative inspection warrant; or

21 (b) The department, the board, or the law enforcement officer has
22 probable cause to believe that the property was used or is intended to
23 be used in violation of this chapter and exigent circumstances exist
24 making procurement of a search warrant impracticable.

25 (3) Notwithstanding the foregoing provisions of this section,
26 articles taxed in this chapter which are in the possession of a
27 wholesaler or retailer, licensed under Washington state law, for a
28 period of time necessary to affix the stamps after receipt of the
29 articles, shall not be considered contraband."

SHB 2027 - S COMM AMD
By Committee on Technology & Communications

ADOPTED 04/10/2003

30 On page 1, line 2 of the title, after "services;" strike the

1 remainder of the title and insert "amending RCW 70.155.010 and
2 82.24.130; reenacting and amending RCW 9A.82.010; adding a new section
3 to chapter 70.155 RCW; and prescribing penalties."

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